

March 22, 2006

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

Re: *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands – WT Docket No. 03-66*

*NOTICE OF ORAL EX PARTE COMMUNICATION*

Dear Ms. Dortch:

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, I am writing to report that earlier today I met on behalf of the Wireless Communications Association International, Inc. ("WCA") with Peter Corea and Joel Taubenblatt of the Wireless Telecommunications Bureau to discuss recent proposals for the reinstatement of a rule limiting Educational Broadband Service ("EBS") excess capacity lease terms and other issues pending before the Commission in the above-referenced proceeding.

During the course of the meeting, I expressed WCA's concern that while the National ITFS Association ("NIA") and the Catholic Television Network ("CTN") have retreated from their earlier proposal to limit the term of EBS leases to just 15 years, their most recent proposals still do not provide assured access to spectrum for a sufficient length of time to satisfy the needs of the investment community. I pointed out that WCA recently filed a study by Michael Pelcovits which concluded that any lease period shorter than 35 years may expose a potential investor to a substantial possibility of earning inadequate returns on investments, and that even leases in excess of 35 years may not yield a positive financial result depending on the circumstances. I also noted that CTN's proposal for a mandatory revisiting of EBS lease provisions after 15, 20 and 25 years to accommodate the EBS licensee (without regard for the impact of such revisiting on the commercial network) would introduce inordinate risk for potential investors.

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I also reiterated that there is no basis in the record for the Commission to depart from the *Secondary Market* rules and policies that have governed EBS leasing since January 10, 2005. I noted that EBS licensees do not require Commission assistance to protect them – they hold highly-valuable spectrum, are generally pursued by multiple potential commercial suitor when they are ready to lease their EBS spectrum, and have at their disposal highly-effective counsel ready, willing and able to take advantage of the competitive marketplace to assure that EBS licensees realize their objectives during lease negotiations. I also pointed out that those objectives vary greatly from EBS licensee to licensee and, just as happened when the Commission micro-managed the leasing of EBS spectrum for wireless cable video systems in the 1980s and 1990s, Commission intervention into the EBS broadband leasing process is likely to adversely impact the ability of some licensees to achieve their educational objectives.

In addition, we discussed the substantial legal and policy concerns that would be raised if the Commission reinstates EBS lease term limits and attempts to retroactively applying those new limits to EBS leases entered into under the current regulatory regime, which does not impose any maximum lease term on EBS leases. I noted that a retroactive ruling rolling back the term of existing contractual arrangements would exceed the Commission's legal authority, would undermine investor confidence in the Commission's entire *Secondary Markets* regime, and would require EBS licensees to disgorge substantial up-front consideration that they received in exchange for agreeing to long lease terms.

Finally, I expressed WCA's concern that, because of the passage of time since the effective date of the current rules, care must be taken to assure that licensees have sufficient time to transition to the new 2.5 GHz bandplan and to demonstrate compliance with the Commission's new performance requirements.

Pursuant to Section 1.1206(b) of the Commission's Rules, an electronic copy of this letter is being filed with the office of the Secretary. Should you have any questions regarding this presentation, please contact the undersigned.

Respectfully submitted,

/s/ Paul J. Sinderbrand

Paul J. Sinderbrand

Counsel for the Wireless Communications  
Association International, Inc.

cc: Peter Corea  
Joel Taubenblatt